

**ORDINANCE 615  
CITY OF DAYTON, OREGON**

***An Ordinance Amending Various Sections of the Dayton Municipal Code, Removing All Fees From the Dayton Municipal Code, and Referring to the City's Fee Schedule***

**WHEREAS**, the City Council desires to make certain administrative adjustments to the Dayton Municipal Code; and

**WHEREAS**, the changes to be made include sections 2.2.4, 2.3.10, 2.12.3, 2.27.2.6, 2.50, 3.3, 3.3.1, 3.6.2, 3.6.4, 3.6.6(3), 6.11.7(3)B, 6.11.9(5) of the Dayton Municipal Code as included in Exhibit 1; and

**WHEREAS**, on September 3, 2013, the City Council considered the information provided by staff and deliberated on the proposed action.

**The City of Dayton ordains as follows:**

**Section 1.** The City Council hereby adopts Ordinance 615

**Section 2.** The City Council adopts the amendments to the Dayton Municipal Code attached as Exhibit 1 and incorporated by reference herein; and

**Section 3.** This Ordinance shall become effective 30 days after adoption by the City Council.

**PASSED AND ADOPTED** by the City Council of the City of Dayton on this 7<sup>th</sup> day of October 2013.

Mode of Enactment:

Date of first reading: September 3, 2013

Date of second reading: October 7, 2013

No Council member present at the meeting requested that the ordinance be read in full.

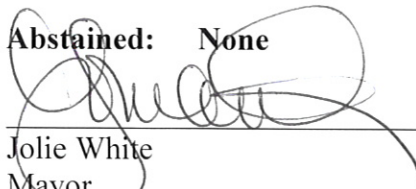
\_\_\_\_\_ A copy of the ordinance was provided to each Council member; three copies were provided for public inspection in the office of the City Recorder no later than one week before the first reading of the Ordinance.

**In Favor: Bixler, Blackburn, Collins, Frank, Utt, White & Wytoski**

**Opposed: None**

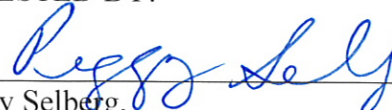
**Absent: None**

**Abstained: None**

  
\_\_\_\_\_  
Jolie White  
Mayor

10/10/13  
Date of Signing

ATTESTED BY:

  
\_\_\_\_\_  
Peggy Selberg,  
City Recorder

10/7/13  
Date of Enactment

**Attachment: Exhibit 1**

## CHAPTER 2 - OFFENSES

- 2.1 Enacting Ordinance.** Unless otherwise indicated in code sections, Chapter 2 of Dayton Code is enacted by Dayton City Ordinance #481, adopted 07/18/94, and effective 08/18/94; and amended by Ordinance #487, adopted and effective 02/06/95; and Ordinance #496, adopted and effective 04/07/97. On June 2, 1997, Ordinance #498 adopted a complete rewrite of the Chapter, which was effective on 06/02/97; then amended by Ordinances #508 and #509, adopted and effective 11/02/98; and Ordinance #528, adopted and effective 03/05/01.
- 2.2 Motor Vehicle Offenses.**
- 2.2.1 Statutory Traffic Offenses.** Oregon Revised Statutes Chapters 801 through 822 (the Oregon Vehicle Code), Chapter 153 and Chapter 823, as they currently exist and as they may be subsequently amended, are incorporated by reference within the Dayton Code, as though they were set forth fully.
- 2.2.2 Penalty for Violation.** Any violation defined by the statute chapters listed Dayton Code section 2.2.1 shall be an identical violation of Dayton Code.
- 2.2.3 Impoundment of Vehicle.** A police officer who reasonably believes that a person is driving an uninsured vehicle in violation of ORS 806.010, is driving without a valid driver's license in violation of ORS 807.010(1), or is driving while their driver's license is suspended in violation of ORS 811.175 and 811.182, as these are incorporated within Dayton Code, and who issues a citation to the driver for that offense or any traffic crime, may, without prior notice, order the vehicle impounded until a person with right to possession of the vehicle complies with the conditions for release or the municipal court judge orders that the vehicle be released. The police officer shall give notice that the vehicle has been impounded to the same parties, in the same manner and within the same time limits as provided in ORS 819.180, as it has been incorporated into Dayton Code, for notice after removal of a vehicle.
- 2.2.4 Conditions for Release.** A vehicle impounded under Dayton Code section 2.2.3 shall be released to a person entitled to lawful possession upon proof of compliance with financial responsibility requirements for the vehicle, payment to the City Recorder of ~~the associated administrative feea fee of \$75~~ and payment of any towing and storage charges.
- 2.2.5 Trial for Uninsured Vehicle.** The impounding police officer shall have the burden of proving by a preponderance of the evidence that there were reasonable grounds to believe that the vehicle was being operated in violation of ORS 806.010, as it is incorporated within Dayton Code. If the judge finds that the impoundment of the vehicle was proper, the judge shall enter an order supporting the removal and shall find that the owner or person entitled to possession of the vehicle is liable for usual and customary towing and storage costs. If the judge finds that impoundment of the vehicle was improper, the judge shall order the vehicle released to the person entitled to possession and

Class B violation.

- (b) Knowingly and willfully give any false, untrue, or misleading information to such an officer who is acting in the discharge or apparent discharge of the officer's duty with the intent to hinder, delay, mislead, or impede such officer in the prosecution of the officer's official work or with the intent to obstruct justice. Any violation of this provision of the Dayton Municipal Code is punishable as stated in the applicable Oregon Revised Statutes.
- (c) Discard, mutilate, or destroy any parking citation which charges a violation of this ordinance if such charge has not yet been finally resolved by payment of fine or final court action. Any violation of this provision of the Dayton Municipal Code is a Class B violation.

**2.3.7 Unauthorized Parking Control Devices.** It shall be unlawful for any person to place, erect, paint, inscribe or otherwise establish any parking control device on a public right-of-way which purports to restrict or control parking, except such parking control devices as are authorized by the City of Dayton or the laws of the State of Oregon. Any violation of this provision of the Dayton Municipal Code is a Class B violation.

**2.3.8 Parking Citation.** Any peace officer may serve a citation into municipal court for a Dayton Code Section 2.3 violation by conspicuously affixing a copy of the citation to the parked vehicle, or by personally serving the citation on the operator of the vehicle, and by filing the original and proof of service with the clerk of the municipal court. Parking citations need not be uniform citations but shall conform to the citation requirements of ORS 133.065, as it currently exists and as it may be subsequently amended.

**2.3.9 Responsibility for Violations.**

- (a) The registered owner of a vehicle or boat parked in violation of Dayton Municipal Code shall be responsible for the offense, except where the use of the vehicles or boat was secured by the operator without the registered owner's consent.
- (b) In a prosecution involving a vehicle or boat charged with a violation of this ordinance, proof that at the time of the alleged violation the vehicle or boat was registered with the appropriate motor vehicle or marine licensing authority of any state as belonging to the defendant shall raise a disputable presumption that the defendant was the owner in fact.

**2.3.10 Bail.**

- (a) Any person charged with a violation of this section of the Dayton Municipal Code may, without personal appearance before the Municipal Judge or such other judge as the Council may designate from time to time, make a payment for the bail in the amount shown on the citation charging such offense. ~~Such bail shall be set at \$5 per axle, with a minimum bail of \$10.~~



- (c) Took reasonable steps to control the conduct of the child at the time the person is alleged to have failed to supervise the child.

**2.12.3 Restitution.** In a prosecution of a person for failing to supervise a child under Section 2.13 of this Code, the Municipal Court may order the person to pay restitution under ORS 137.103 to 137.109 to a victim for pecuniary damages arising from the act of the child that brings the child within the jurisdiction of the juvenile court.

~~2.12.3.1 Amount. The amount of restitution ordered under this section may not exceed \$2,500.00.~~

**2.12.4 Penalties.**

**2.12.4.1 No Previous Conviction.**

- (a) If a person pleads guilty or is found guilty of failing to supervise a child under this Section and if the person has not previously been convicted of failing to supervise a child, the court:
  - (1) Shall warn the person of the penalty for future convictions of failing to supervise a child and shall suspend imposition of sentence;
  - (2) May or may not order the person to pay restitution under this section.

**2.12.4.2 One Prior Conviction.**

- (a) If a person pleads guilty or is found guilty of failing to supervise a child under this section and if the person has only one prior conviction for failing to supervise a child, the court, with the consent of the person, may suspend imposition of sentence and order the person to complete a parent effectiveness program approved by the court. Fees for such a program, if any, shall be borne by the person pleading or found guilty. Upon the person's completion of the parent effectiveness program to the satisfaction of the court, the court may discharge the person. If the person fails to complete the parent effectiveness program to the satisfaction of the court, the court may impose a sentence authorized by this section.
- (b) There may be only one suspension of sentence under this section with respect to a person.

~~2.12.4.3 Fine. Failing to supervise a child is an offense punishable by a fine of not more than \$1,000.~~

**2.27.2.4 Nuisance.**

- (a) Drug paraphernalia are public nuisances. Any peace officer shall summarily seize any such paraphernalia and shall deliver it to the Chief of Police, who shall hold it subject to the order of municipal court.
- (b) Whenever it appears to the court that drug paraphernalia has been possessed in violation of this subchapter, the court shall order the Chief of Police to destroy the paraphernalia.
- (c) In such event that the City of Dayton contracts with any law enforcement agency to provide contract law enforcement services it shall be the responsibility of such law enforcement agency to maintain and destroy paraphernalia in accordance with sub sections (a) and (b) above.

**2.27.2.5 Infraction Procedure.** Violation of § 2.27.2.3(a) and (b) of this chapter is an infraction. Citations shall be issued and court procedures followed that are in accordance with O.R.S. 153.110 to 153.280.

**2.27.2.6 Penalty.** The penalty for the conviction of § 2.27.1.1, § 2.27.2.3(a) and (b), § 2.27.2.3 (c) of this chapter shall be punishable according to the fines set forth in the City's Fee Schedule of Penalties.

- ~~(a) The penalty for the conviction of § 2.27.1.1 of this chapter shall be punishable by a fine of not less than \$500 and not more than \$1,000; provided that if the unlawful possession occurs in a public place as defined in O.R.S. 161.015, that is within 1,000 feet of the real property comprising a public or private elementary, vocational or secondary school attended primarily by minors, the offense shall be a misdemeanor offense and upon conviction, the defendant may be imprisoned for not more than 30 days, and/or fined not more than \$1,000, or both.~~
- ~~(b) Any person who violates § 2.27.2.3(a) and (b) of this chapter is guilty of an infraction and upon conviction may be fined not more than \$500.~~
- ~~(c) Any person who violates § 2.27.2.3 (c) of this chapter upon conviction may be imprisoned for not more than one year, fined not more than \$2,500, or both.~~

(Section 2.28 through 2.49 reserved for expansion)

**2.50 Schedule of Penalties.** Unless otherwise defined in a specific section of Dayton Code, a sentence to pay a fine for a Dayton Municipal Code violation shall be set forth in the City's Fee Schedule, ~~a sentence to pay:~~

~~(a) **Unclassified Misdemeanor.** A fine not to exceed \$500 or 10 days confinement in the County Jail;~~

~~(b) **Class A Violation.** A fine up to but not to exceed \$500;~~

~~(c) **Class B Violation.** A fine up to but not to exceed \$250;~~

~~(d) **Class C Violation.** A fine up to but not to exceed \$100.~~

~~(e) **Violations of Chapter 7** of the Dayton Municipal Code (Land Use & Development) shall be subject to a fine of up to, but not to exceed \$500. Such a fine shall be in addition to any other remedy available by law, including injunctive relief. The City may cause an appropriate action to be instituted in a court of competent jurisdiction in order to gain compliance with this code. *(Added by Ordinance #509, 11-02-98 Effective 11-02-98)*~~

**2.60 Each Day Separate Offense.** Each day on which a violation occurs shall constitute a separate offense.

**2.70 Citation in Lieu of Abatement.** A police officer may issue and serve a uniform citation to appear in municipal court, in lieu of other remedies that may be set forth for any violation defined by Dayton Municipal Code. Uniform citations are those authorized by ORS 1.525, as it currently exists and as it may be subsequently amended.

**2.80 Failure to Appear.** A defendant commits a Dayton Municipal Code Unclassified Misdemeanor, in addition to any violations defined by Oregon Revised Statutes, by failing to appear in Municipal Court, as he or she is cited to do.

**2.90 Giving False Information to a Peace Officer for an Ordinance Citation.**

- (1) A person commits the offense of giving false information to a peace officer for an ordinance citation if the person knowingly uses or gives a false or fictitious name, address or date of birth to any peace officer for the purpose of the officer's issuing or serving a citation under authority of the Dayton Municipal Code.
- (2) A person who violates this provision of the Dayton Municipal Code commits an Unclassified Misdemeanor.



- (10) **“Lottery”** means a game in which the players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other medium, one or more of which chances are to be designated the winning ones; and the winning chances are to be determined by a drawing or some other method; and the holders of the winning chances are to receive something of value. *(Amended by Ordinance #505, 5/4/98 – Effective 5/4/98)*
- (11) **“Raffle”** means a lottery operated by a charitable, fraternal or religious organization wherein the players pay something of value for chances, represented by numbers or combinations thereof or by some other medium, one or more of which chances are to be designated the winning ones or determined by a drawing and the player holding the winning chance is to receive something of value. *(Amended by Ordinance #505, 5/4/98 – Effective 5/4/98)*
- (12) **“Social game”** means:
- (a) a game, other than a lottery, between players in a private home where no house player, house bank or house odds exist and there is no house income from the operation of the social game; and
  - (b) a game, other than a lottery, between players in a private business, private club or place of public accommodation where no house player, house bank or house odds exist and there is no house income from the operation of the social game. Definitions of terms used to define social game are the same definitions of terms found in ORS chapter 167. *(Renumbered by Ordinance #505, 5/4/98 – Effective 5/4/98)*
- (13) **“Something of Value”** means any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein. *(Added by Ordinance #505, 5/4/98 – Effective 5/4/98)*

**3.3 Business Registration.** No individual or entity may conduct business within the City without registering annually with the City Recorder. Business registrations expire on December 31st of each year and must be renewed annually. ~~It is a Class A violation of Dayton Code to conduct business within the City without being currently registered.~~ *(Amended by Ordinance #505, 5/4/98 – Effective 5/4/98)*

~~**3.3.1 Fee for Business Registration.** The annual fee for business registration is \$25.00.~~

**3.3.2 Procedure for Registration.** An individual, or an agent of an entity, intending to conduct business shall first submit a completed Business Registration Form and annual fee to the City Recorder, either in person during regular business hours at City Hall or by mail.

**3.3.3 Interpretation.** Registration pursuant to Dayton Code section 3.3 does not

mean that the City authorizes any business activity or that any legal requirements have been met, other than registration pursuant to this section.

**3.3.4 Violation.** A violation of any provision of section 3.3 of Dayton Code shall be a Class B violation. *(Amended by Ordinance #505, 5/4/98 – Effective 5/4/98)*

**3.4 Gambling Prohibited.** It is unlawful for any person to participate or engage in any gambling activity as a player, or for any person to frequent or remain at any place where gambling is being conducted. *(Added by Ordinance #505, 5/4/98 – Effective 5/4/98)*

**3.4.1 Violation.** A violation of any provision of section 3.4 of Dayton Code shall be a Class A violation.

3.5 *(License for Game of Skill-Repealed ORD 591, passed 11/2/09 and adopted 12/2/09)*

**3.6 Social Games.**

**3.6.1 Social Game License.** No person or entity shall operate or allow a social game in an area under his, her or its control that is open to the public, unless a current Social Game License, issued by the City Council is prominently displayed. Social Game Licenses expire on December 31st each year, and must be renewed annually to be current. Any individual operating or allowing an unlicensed social game in an area under his or her control that is open to the public shall be guilty of a Class A violation. *(Amended by Ordinance #505, 5/4/98 – Effective 5/4/98)*

**3.6.2 Application for Social Game License.** The initial application for a social game license and ~~the associated a \$100~~ non-refundable investigation fee must be submitted to the City Recorder at least 30 days prior to the date council will conduct the hearing to determine initial eligibility for the license. The initial application shall include the following items, and any additional information needed for clerical purposes:

- (a) Complete names, addresses, dates of birth and social security numbers of all individuals with any financial interests in the business or enterprise that will be operating or allowing the social game on its premises;
- (b) Detailed description of all business enterprises conducted by the entity or individual who will be operating or allowing the social game on his or her premises;
- (c) Complete history of criminal convictions of all individuals with financial interests in the business or enterprise that will be operating or allowing the social game on its premises;
- (d) Fingerprints and photographs of all individuals with financial interest in the business or enterprise that will be operating or allowing the social game on its premises;



- (e) Consent, signed by all individuals with financial interests in the business or enterprise that will be operating or allowing the social game on its premises, authorizing city staff to confirm all information contained in the application and authorizing third parties to release confidential information to city staff; and
- (f) Exact location where social game will be conducted.

**3.6.3 Eligibility.** City Council shall find that the applicant is eligible to be licensed or receive a renewal of his or her license, upon payment of the annual Social Game License fee, unless following hearing on the matter City Council finds one or more of the following situations:

- (a) An individual with a financial interest in the business, that will be operating or allowing the social game on its premises, has been convicted of a federal, state or local gambling or gaming violation or crime, within the last ten years;
- (b) False or misleading information was supplied on the application; or information requested was omitted from the application;
- (c) Any premises under the control of the business that will be operating or allowing the social game on its premises has been the site of more than one intentional physical injury to an individual within the past five years; or
- (d) An individual with a financial interest in the business that will be operating or allowing the social game on its premises, has been convicted of a federal, state or local violation or crime pertaining to alcohol, or has been found in noncompliance with an Oregon Liquor Control Commission administrative rule, within the last five years.

**3.6.4 License Fee.** ~~The~~An annual Social Game License fee shall be required according to the City's Fee Schedule \$120 for any entity that is not tax exempt; and shall be \$25 for any entity that has tax exempt status from the Internal Revenue Service. The annual fee may be prorated when first issued, if issued for a remaining portion of a year.

**3.6.5 Revocation of License.** City Council may conduct a hearing at any time during the year, following a 30-day notice to a Social Game Licensee, to determine if any of the situations defined in section 3.6.3 or 3.6.6 exists. If City Council finds that such a situation exists, it shall revoke the license. No portion of the annual license fee shall be refunded when a Social Game License is revoked.

**3.6.6 Social Game Regulations.** No person shall operate a social game in which any of the following situations occur:

- (a) A bet is greater than \$2.00, a three-raise limit has been exceeded, or there has been a back-up bet;

- B. To provide the City with accurate and current information concerning the telecommunications carriers who offer to provide telecommunications services within the City, or that own or operate telecommunications facilities within the City.
  - C. To assist the City in the enforcement of this Code and the collection of any city franchise fees or charges that may be due the City.
- (2) **Registration Required:** Except as provided in Subsection D hereof, all telecommunications carriers having telecommunications facilities within the corporate limits of the City, and all telecommunications carriers that offer or provide telecommunications service to customer premises within the City, shall register. The appropriate application and license from: a) the Oregon Public Utility Commission (PUC); or b) the Federal Communications Commission (FCC) qualify as necessary registration information. Applicants also have the option of providing the following information:
- A. The identity and legal status of the registrant, including the name, address, and telephone number of the duly authorized officer, agent, or employee responsible for the accuracy of the registration information.
  - B. The name, address, and telephone number for the duly authorized officer, agent, or employee to be contacted in case of an emergency.
  - C. A description of the registrant's existing or proposed telecommunications facilities within the City, a description of the telecommunications facilities that the registrant intends to construct, and a description of the telecommunications service that the registrant intends to offer or provide to persons, firms, businesses, or institutions within the City.
  - D. Information sufficient to determine whether the transmission, origination or receipt of the telecommunications services provided, or to be provided, by the registrant constitutes an occupation or privilege subject to any business license requirements. A copy of the business license or the license number must be provided.
- (3) **Registration Fee:** Each application for registration as a telecommunications carrier shall be accompanied by a nonrefundable registration fee according to the City's Fee Schedule~~in the amount of \$35.00, or as otherwise established by resolution of the City Council.~~
- (4) **Exceptions to Registration:** The following telecommunications carriers are excepted from registration:
- A. Telecommunications facilities that are owned and operated exclusively for its own use by the State or a political subdivision of this State.
  - B. A private telecommunications network, provided that such network does not occupy any public rights of way of the City.

information on plans for local, state, and/or federal construction projects.

- C. All construction locations, activities and schedules shall be coordinated, as ordered by the City Engineer or designee, to minimize public inconvenience, disruption or damages.

#### 6.11.7 Telecommunications Franchise

- (1) **Telecommunications Franchise:** A telecommunications franchise shall be required of any telecommunications carrier who desires to occupy public rights of way of the City.
- (2) **Application:** Any person that desires a telecommunications franchise must register as a telecommunications carrier and shall file an application with the City which includes the following information:
  - A. The identity of the applicant.
  - B. A description of the telecommunications services that are to be offered or provided by the applicant over its telecommunications facilities.
  - C. Engineering plans, specifications, and a network map in a form customarily used by the applicant of the facilities located or to be located within the public rights of way in the City, including the location and route requested for applicant's proposed telecommunications facilities.
  - D. The area or areas of the City the applicant desires to serve and a preliminary construction schedule for build-out to the entire franchise area.
  - E. Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the telecommunications services proposed.
  - F. An accurate map showing the location of any existing telecommunications facilities in the City that applicant intends to use or lease.
- (3) **Application and Review Fee:**
  - A. Subject to applicable state law, applicant shall reimburse the City for such reasonable costs as the City incurs in entering into the franchise agreement.
  - B. An application and review fee according to the City's Fee Schedule of ~~\$1,000~~ shall be deposited with the City as part of the application filed pursuant to Subsection B above. Expenses exceeding the deposit will be billed to the applicant or the unused portion of the deposit will be



- (1) **Governing Law:** Any franchise granted under this Code is subject to the provisions of the Constitution and laws of the United States, and the State of Oregon and the ordinances and Charter of the City.
- (2) **Written Agreement:** No franchise shall be granted hereunder unless the agreement is in writing.
- (3) **Nonexclusive Grant:** No franchise granted under this Code shall confer any exclusive right, privilege, license or franchise to occupy or use the public rights of way of the City for delivery of telecommunications services or any other purposes.
- (4) **Severability and Preemption:** If any article, section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this Code is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, or superseded by state or federal legislation, rules, regulations or decision, the remainder of the Code shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, provision, condition, covenant and portion of this Code shall be valid and enforceable to the fullest extent permitted by law. In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Code, then the provision shall be read to be preempted to the extent and or the time required by law. In the event such federal or state law, rules or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding, without the requirement of further action on the part of the City, and any amendments hereto.
- (5) **Penalties:** Any person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Chapter shall be fined according to the City's Fee Schedule~~not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00)~~ for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs. The enforcement of this provision shall be consistent with the provisions of this Code regulating code enforcement.
- (6) **Other Remedies:** Nothing in this Code shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this Code.
- (7) **Captions:** The captions to sections throughout this Code are intended solely to facilitate reading and reference to the sections and provisions contained herein. Such captions shall not affect the meaning or interpretation of this Code.
- (8) **Compliance with Laws:** Any grantee under this Code shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all ordinances, resolutions, rules and